IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.68 OF 2007

Mangesh D. Temkar ..Petitioner.

V/s.

State of Marashtra & Ors. ..Respondents.

Mr.A.S. Khandeparkar for petitioner.

Mr.S.R.Page for respondent No.4.

Mr.V.A.Sonpal for respondent No.1.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 24TH AUGUST, 2007.

P.C. :-

We are clearly of the opinion that this is not a Public Interest Litigation but a proceeding by the petitioner espousing his own private interest as he himself is a licence holder.

2. Earlier "Association of Sindhudurg Zilla Hotel ‘Malak’ Unnati Sangh", of which the petitioner is a member had filed a Public Interest Litigation petition. That Petition was withdrawn on a statement made by the counsel on production of a letter dated 3/1/2007. The petition was accordingly dismissed as withdrawn. Some of the prayer for reliefs in that petition read, as under:-

a) that this Hon’ble Court be pleased to issue Writ of Mandamus or any other appropriate Writ order or direction for directing the enquiry into the matter of granting permission to the 4th Respondent for fl3 Licence No.83 permitting the Respondent an permit room.

b) That this Hon’ble Court be pleased to issue Writ of Certiorari or any other appropriate Writ, order or direction calling for records and proceedings in respect of granting FL3 Licence No.83 to the 4th Respondent in respect of Hotel Raj Palace and on perusal thereof be pleased to quash and set aside the FL3 Licence granted to the 4th Respondent Raj Palace, Achara, Tal. Malvan, Dist. Sindhudurg.

It is not necessary for us to refer to the other prayer clauses. It is, therefore, clear that when the earlier petition was filed the respondent No.4 already has a licence and that was the subject matter of the challenge before this Court.

3. In the present petition the reliefs prayed for are as under:-

a) that this Hon’ble Court be pleased to issue Writ of Mandamus or any other appropriate Writ order or direction for directing the enquiry into the process of grant of permission to the 4th Respondents’ Hotel Raj Palace for permit room / FL-3 License.

b) That this Hon’ble Court be pleased to issue Writ of Certiorari or any other appropriate Writ, order or direction calling for records and proceedings in respect of granting FL3 Licence to the respondent No.3 in respect of Hotel Raj Palace and on perusal thereof be pleased to quash and set aside the FL3 Licence granted to the 4t h Respondent Raj Palace, Achara, Tal. Malvan, Dist. Sindhudurg.

4. It is, therefore, clear that the reliefs sought in the earlier petition and the reliefs sought in the present petition are the same.

The order dated 10/1/2007 did not grant any liberty to the petitioner therein to file another petition.

5. The question is whether in these circumstances the second petition as filed is maintainable. The law is now well settled that the principles of res-judicata and / or in the matter of withdrawal of a suit would also apply to the petitions.

Apart from that, we have the affidavit of the Excise Department which has set out that the licence had been granted after considering the distance of the premises from the State Highway i.e. which was 50.60 mtrs. from the middle of State Highway, when the requirement is only 50 Mtrs.

6. In our opinion, considering the principles of res-judicata and / or withdrawal of the petition by the Association of which the petitioner was a member without liberty, a second petition with same cause of action is barred. We have already held at the threshold that this is nothing but a private dispute of the petitioner with the respondent No.4, both of whom are licence holders. We are, therefore, of the opinion, that the petition will have to be dismissed by imposing exemplary costs.

7. Petition is dismissed. Petitioner to pay cost of Rs.10,000/- to the respondent No.4 within eight weeks.

(F.I.REBELL0, J.)

(J.P.DEVADHAR, J.)